

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

William J. Tiemann,

Petitioner,

v.

City of Oakdale,

Respondent.

**ORDER DENYING
RESPONDENT'S MOTION
FOR SUMMARY DISPOSITION**

Respondent's motion seeks summary disposition of Petitioner's claim for relief under the Veterans Preference Act. Respondent claims that there are no genuine issues of material fact and caselaw "compels" a summary disposition. Petitioner asserts that the motion must be denied because there are contested factual issues material to the resolution of Petitioner's veterans preference claim.

Brian E. Cote, Esq., Cote Law Firm, Ltd., 900 Midwest Plaza East, 800 Marquette Avenue, Minneapolis, Minnesota 55402, appeared representing Petitioner. Becky R. Thorson, Esq., Greene & Espel, Attorneys and Counselors, 333 South Seventh Street, Suite 1700, Minneapolis, Minnesota 55402, appeared representing Respondent, the City of Oakdale ("City").

Based upon the Motion for Summary Disposition, the written submissions of the representatives of the parties and on all the files and records herein, the Administrative Law Judge makes the following:

ORDER

The Motion for Summary Disposition is DENIED in all respects.

The trial of the merits shall occur on June 24, 1998 at the time and location indicated in the Order For Hearing. If this date is inconvenient, Parties shall determine a convenient date for trial of the merits in consultation with OAH Staff Attorney Michael Lewis. Parties shall also direct all questions regarding OAH hearing process to OAH Staff Attorney Michael Lewis at 341-7610.

Dated this 20th day of April 1998.

ALLEN E. GILES
Administrative Law Judge

MEMORANDUM

Respondent requests summary disposition of Petitioner's claims for relief under the Veterans Preference Act. The request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota rules of Civil Procedure. The same standards apply. Minn. Rule pt. 1400.5500 K. Summary disposition of a claim is appropriate when there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law. Minnesota Rules of Civil Procedure, Rule 56.03. A material fact is one which is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact. Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W.2d 804 (Minn. App. 1984). In considering the Motion for Summary Disposition, a court must view the evidence in the light most favorable to the nonmoving party. Grandahl v. Bulluck, 318 N.W.2d 240 (Minn. 1982); Nord v. Herreid, 305 N.W.2d 337 (Minn. 1981); American Druggists Insurance v. Thompson Lumber Co., 349 N.W.2d 569 (Minn. 1989).

To obtain a summary disposition, the moving party must establish that there is no genuine issue of material fact. The initial burden is on the moving party to establish a prima facie case for the absence of material facts at issue. Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). Once the moving party has established a prima facie case, the burden shifts to the nonmoving party. Minnesota Mutual Fire & Casualty Company v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990). When the movant also bears the burden of persuasion on the merits at trial, its burden on summary disposition is to present "credible evidence" that would entitle it to a directed verdict if not controverted at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 2557, 91 L.Ed.2d 265 (1986) (dissenting opinion restating majority position); Thiele, 425 N.W.2d at 583, n. 1.

Viewing the facts most favorable to the nonmoving party, the following is established for purposes of the summary disposition motion. William J. Tiemann is an honorably discharged veteran employed by the City of Oakdale in the Public Works Department as a Maintenance Worker. He has been employed by the City of Oakdale since February 10, 1993.

In the Spring of 1997, the Utility Supervisor position at the Public Works Department became vacant. Petitioner William J. Tiemann and a co-worker, Claude Storhaug, both applied for the Utility Supervisor position. In early May 1997, Utility Superintendent Rollie Harrington interviewed William Tiemann for the position of Utility Supervisor. At the interview, Rollie Harrington told William Tiemann that Claude Storhaug would receive the position. Also at that time Rollie Harrington informed William Tiemann that he would replace Claude Storhaug as the Lead or Senior Utility Maintenance position. He also told William Tiemann that he would receive a pay increase from Step 5 to Step 6. William Tiemann accepted the assignment to the Lead Utility position.

On or about May 19, Rollie Harrington, Claude Storhaug and William Tiemann met to discuss new assignments for Claude Storhaug and William Tiemann. At that time, Rollie Harrington again informed William Tiemann that he would receive the Lead Utility position along with a pay raise to Step 6. After that meeting, Rollie Harrington announced to other employees in the Public Works Department the reassignments of Claude Storhaug as Utility Supervisor and William Tiemann as the Lead Utility person.

After Rollie Harrington's announcement of the reassignments, Claude Storhaug was promoted to Utility Supervisor. But William Tiemann was not reassigned to the Lead Utility person position and did not receive a pay raise to Step 6.

William Tiemann's Petition filed with the Commissioner of Veterans Affairs, specifically alleges that he was denied a promised promotion, had several duties removed from him including the promotion and overtime duties. He seeks back pay and restoration of the promised position.

Minnesota law establishes that whenever a public employer proposes to demote or discharge a veteran, the employer must give the veteran an opportunity to contest the action at a hearing upon written charges of misconduct or incompetency. A leading case on demotions is Ammend v. Isanti County, 486 N.W.2d 3 (Minn. App. 1992). The dispute in that case turned on whether a veteran had been demoted by the County Sheriff (his victorious opponent in the recent election for that position) when he was told to take the "undersheriff" sign off his door and was reassigned to the least desirable duties available at the sheriff's office. The Administrative Law Judge concluded, in a report that was subsequently adopted by the Commissioner of Veterans Affairs, that the veteran had been demoted, even though his salary was not decreased and he was arguably technically simply reassigned to different duties within the same title or position of "deputy sheriff":

It is the well settled responsibility of the law to pierce the titular veil. Substance must always prevail over mere designation of official titles. Hennepin County v. Brandt, 225 Minn. 345, 31 N.W.2d 5 (Minn. 1948). "Courts must particularly scrutinize claims of exemption from the Veterans Preference Act, because the legislature has unequivocally stated that the burden of proving the exemption is on the appointing authority." In Caffrey v. Metropolitan Airports Commission, 310 Minn. 480, 246 N.W.2d 637 (Minn. 1976), for example, the Court rejected the Commission's claim that Petitioner was a "department head" exempt from the Veterans Preference Act where petitioner's "department" consisted of one personal secretary. The law looks to the "de facto" nature of the position occupied by the Petitioner, rather than its characterization by the appointing authority. This doctrine can also cut against the veteran. In Huff v. Sauer, 243 Minn. 425, 68 N.W.2d 252 (Minn. 1955), for example, the Court held that the veteran was validly removed considering his "de facto" duties as a patrolman. Accord, Granite Falls Municipal Hospital and Manor Board v. State Department of Veterans Affairs, 291 N.W.2d 683 (Minn. 1980).

It is often in the interests of an appointing authority to contend that a change in duties is not a demotion, particularly where the employer wishes to avoid trying to justify its actions at a hearing.

The Minnesota Court of Appeals affirmed the Commissioner's Order and recognized that there is no clear legal definition of "demotion":

Although Minnesota Courts have not defined what it means to be demoted, Black's Law Dictionary defines demotion as a "reduction to lower rank or grade, or to lower type of position" Black's Law Dictionary, Fifth Ed. (1983).

Ammend v. County of Isanti, 486 N.W.2d 3, 6 (Minn.App. 1992).

On the other hand, Minnesota case law also establishes that a veteran is not entitled to a veterans preference hearing when the demotion is a good faith personnel decision which is not based on allegations of misconduct or incompetence. Gorecki v. Ramsey County, 437 N.W.2d 646 (Minn. 1989). When evaluating a public employer's decision affecting a veteran Gorecki directs that courts must be guided by two principles:

- (1) Veterans must be protected from the ravages of a political spoils system, but ministerial and perfunctory reorganizations "will withstand scrutiny if based upon a reasonable exercise of administrative discretion".
- (2) Courts must "examine the substance of the Administrative Decision rather than its mere form."

A common thread in the cases dealing with alleged demotions of veterans is the need to base legal conclusions on all of the surrounding facts and circumstances. Recognizing that the Veterans Preference law has been in effect for over 100 years, it is reasonable to assume that parties contesting this issue will find case law supporting numerous factual scenarios. That is certainly true in this case.

The question presented by the City of Oakdale's Motion for Summary Disposition is whether the failure to reassign William Tiemann to the Lead Utility person position and the failure to increase his wages from Step 5 to Step 6 constitute a demotion triggering veterans preference rights to a hearing over the issue of just cause for the revised personnel decision.

The City asserts that William Tiemann was not demoted. In support of this assertion, the City explains that it does not have a position classified as "Lead Worker" and that Lead Worker is an assignment instead of a position. The City also asserts that William Tiemann lacked the minimum qualifications for assignment to the Lead Worker assignment. Finally the City argues that any change in William Tiemann's responsibilities or duties were the result of his request for "reasonable accommodations" as a result of a previous physical injury.

In the context of this motion, the City argues that there are no genuine issues of material fact and that it is entitled to judgment in its favor as a matter of law. The City asserts that because Petitioner was not "validly" promoted to the Lead worker position,

a recent Minnesota Supreme Court decision compels this result. Ochocki v. Dakota Co. Sheriff's Dept., 464 N.W.2d 496, 497-498 (Minn. 1991)

The City's motion must be denied. Respondent has failed to meet the standards required for a summary disposition. Respondent has failed to make a prima facie showing of the absence of disputed facts. Respondent has failed to present "credible evidence" that would entitle it to a directed verdict if not convert it at trial. Celotex Corp. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 2557 (1986). There are several material disputed facts. The City's own argument introduces factual contests. Some of the material disputed facts include:

Whether Petitioner was validly promoted?

Whether he qualifies for step six compensation.

Whether he qualifies for Lead work responsibilities.

Whether the assumption of Lead work responsibilities would result in a change in pay or title.

Whether a person who assumes lead work responsibilities must be at step six?

Whether there are bad faith issues connected with various disciplinary actions taken against Petitioner subsequent to the change in his duties and responsibilities.

Another reason the City's motion must be denied is that Ochocki does not control the result here. Ochocki does not change the law which directs that a demotion should be determined based on the facts of each case.

Respondent's motion would require the Judge to determine whether Petitioner was "validly promoted." This is an inappropriate role for a trier of fact on a motion for summary judgment. The function of the trier of fact in deciding a Motion for Summary Disposition is never to weigh the evidence in an attempt to determine what the facts are. Wagner v. Schwegmann's South Town Liquor, Inc., 485 N.W.2d 730 (Minn. App. 1992). Once the nonmoving party introduces evidence showing that there is a material fact issue, the inquiry is over and the motion must be denied, without engaging in fact finding.

Appellate courts have repeatedly stressed that the authority of the trier of fact to dispose of issues summarily must be exercised cautiously. Lundgren v. Eustermann, 370 N.W.2d 877 (Minn. 1985). If any doubt exists as to the existence of a material fact, the doubt must be resolved in favor of finding that the fact issue exists Rathbun v. W T Grant Company, 300 Minn. 223, 219 N.W.2d 641, 646 (1974). Woody v. Krueger, 374 N.W.2d 822 (Minn. App. 1985).

1994).

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